

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

JONATHAN LALO, individually and On Be-  
half of a Class of Similarly Situated Individu-  
als,

Plaintiff,

v.

APPLE INC, a California Corporation;  
BACKFLIP, a Delaware Corporation;  
DICTIONARY.COM, a California  
Corporation; PANDORA, INC., a California  
Corporation; THE WEATHER CHANNEL, a  
Georgia Corporation,

Defendants.

Case No. CV-10-5878 LHK (PSG)

**STIPULATION AND ORDER CONSOLI-  
DATING CASES; AND ADOPTING  
PRELIMINARY CASE SCHEDULE,  
EXCEPT AS MODIFIED BY THE  
COURT HEREIN**

DUSTIN FREEMAN, JARED PARSLEY,  
COLE PARR, and PRECIOUS ARRANG-  
TON, on behalf of themselves and all similar-  
ly situated,

Plaintiffs,

v.

APPLE, INC., a Delaware Corporation; GO-  
GII, INC., a Delaware Corporation; PANDO-  
RA MEDIA, INC., a California Corporation;

Case No. CV-10-5881 LHK (PSG)

1 BACKFLIP STUDIOS, INC., a Delaware  
2 Corporation; THE WEATHER CHANNEL,  
3 INC., a Georgia Corporation; DICTIO-  
4 NARY.COM, LLC., a California Corporation;  
5 OUTFIT7 LTD, a Foreign Corporation;  
6 ROOM CANDY, INC., a California Corpora-  
7 tion; SUNSTORM INTERACTIVE, Inc., an  
8 Indiana Corporation,  
9 Defendants.

10 ANTHONY CHIU, individually and on behalf  
11 of all others similarly situated,  
12 Plaintiff,  
13 v.  
14 APPLE, INC., a California Corporation, and  
15 DOES 1 to 50 inclusive,  
16 Defendants.

Case No. CV-11-0407 LHK

17 DANIEL RODIMER, et al.  
18 Plaintiffs

Case No. CV-11-0700 PSG

19 v.  
20 APPLE, INC., FLURRY, INC., MEDIALETS,  
21 INC., PINCH MEDIA, INC., QUATTRO  
22 WIRELESS, INC., IAC/INTERACTIVE  
23 CORP., DICTIONARY.COM, PANDORA,  
24 INC., and THE WEATHER CHANNEL  
25 Defendants.

## STIPULATION AND ORDER

26 Subject to the Court's review and approval, IT IS HEREBY STIPULATED AND  
27 AGREED AND ORDERED as follows:

28 WHEREAS, the related actions *Lalo, et al. v. Apple Inc., et al.*, CV-10-5878-LHK;  
*Freeman, et al. v. Apple Inc., et al.*, CV-10-5881-LHK, *Chiu v. Apple, Inc., et al.*, CV-11-0407-  
LHK and *Rodimer v. Apple, Inc., et al.*, CV 11-0700 PSG (collectively, the "Actions") are  
pending before this Court; and,

1 WHEREAS, counsel for the various plaintiffs have each concluded that it is in the best  
 2 interests of the respective parties and absent putative class members that the above-captioned  
 3 actions be consolidated for all purposes and proceed as contemplated herein; and,

4 WHEREAS, all parties that have appeared, through their respective counsel have stipu-  
 5 lated to the terms provided herein;

6 WHEREAS, it is anticipated that additional related actions may be transferred to, re-  
 7 moved to, or filed in this Court; and,

8 WHEREAS, the existence of common questions of law and fact in the Actions now  
 9 pending before this Court, the interests of fair and efficient administration of the Actions, the  
 10 avoidance of unnecessary duplicative efforts and the avoidance of inconsistency in outcomes,  
 11 warrants the consolidation of the Actions, establishment of an organizational structure for  
 12 plaintiffs' counsel, and the setting of a status conference to discuss, among other things, sche-  
 13 dules for the filing of pleadings, motion practice and discovery, and good cause appearing  
 14 therefore:

15 **IT IS HEREBY ORDERED AS FOLLOWS:**

16 **I. CONSOLIDATION AND TREATMENT OF SUBSEQUENT ACTIONS**

17 1. The Court finds that *Lalo, et al. v. Apple Inc., et al.*, CV-10-5878-LHK; *Free-*  
 18 *man, et al. v. Apple Inc., et al.*, CV-10-5881-LHK, *Chiu v. Apple, Inc.*, CV-11-0407-LHK and  
 19 *Rodimer, et al. v. Apple, Inc., et al.* CV-11-0700-PSG present substantially similar issues of law  
 20 and fact, have been previously related, and are hereby consolidated into *Lalo, et al. v. Apple*  
 21 *Inc., et al.*, CV-10-5878, and are referred to herein as the Consolidated Action. Each document  
 22 filed by a party to this litigation shall bear the following caption:

23 \_\_\_\_\_  
 24 In re iPhone Application Litigation

No. CV-10-5878 LHK (PSG)

25 \_\_\_\_\_  
 26 2. The terms of this Order shall apply to the Consolidated Action and to any and all  
 27 actions later instituted in, removed to, or transferred to this Court that involve the same or sub-  
 28 stantially similar issues of law and fact, subject to the following procedures:

1 a. When such a case is filed in, removed to, or transferred to this Court, **and only**  
 2 **after counsel call to the attention of the Court and the Clerk the filing or transfer of any**  
 3 **such case that might be properly consolidated with this Consolidated Action**, the Clerk of  
 4 Court shall:

- 5 (1) place a copy of this Order in the separate file for such action; and
- 6 (2) make an appropriate entry on the docket for the Consolidated Action.

7 b. Each new case that arises out of the subject matter of the Consolidated Action  
 8 which is filed in this Court or transferred to this Court, shall be consolidated with the  
 9 Consolidated Action and this Order shall apply thereto, unless a party in such newly-  
 10 filed or transferred action objects to consolidation, as provided for herein, or any provi-  
 11 sion of this order, within ten (10) days after the date upon which a copy of this Order is  
 12 served on counsel for such party, by filing an application for relief and this Court deems  
 13 it appropriate to grant such application.

14 3. Counsel shall call to the attention of the Court and the Clerk the filing or trans-  
 15 fer of any case that might properly be consolidated with the Consolidated Action. Mailing or  
 16 other delivery of a copy of this Order by Defendants' counsel or Plaintiffs' Interim Class Coun-  
 17 sel (see II. Below), as appropriate, to the counsel in any newly filed or transferred actions shall  
 18 constitute valid notice thereof for purposes of establishing its applicability to such action in ac-  
 19 cordance herewith.

## 20 **II. ORGANIZATION OF PLAINTIFFS' COUNSEL**

21 1. Plaintiffs shall use their best efforts to self-organize and recommend to the  
 22 Court counsel to serve as Interim Class Counsel under FRCP 23(g). Such recommendation  
 23 shall be submitted to the Court with papers supporting the qualifications for such Interim Class  
 24 Counsel within ten days of the entry of this Order. Any Plaintiff may oppose such recommen-  
 25 dation by filing an opposition within 10 days of notice of consolidation of their case or the fil-  
 26 ing of said recommendation, whichever is later.

27 2. Interim Class Counsel, acting on behalf of Plaintiffs, shall have the following  
 28 duties:

- a. To coordinate all proceedings, including preparing, structuring, and presenting pretrial and other management related orders;
  - b. To encourage full cooperation and efficiency among all counsel;
  - c. To create any necessary committees and appoint committee chairs and otherwise delegate responsibilities for specific tasks in a manner to assure that pretrial and trial preparation is conducted effectively, efficiently, and economically;
  - d. To delegate work responsibilities and monitor the activities of counsel to assure that schedules are met and unnecessary expenditures of time and expense are avoided;
  - e. To act as spokespersons at all court conferences;
  - f. To call meetings of themselves and/or other counsel as appropriate or necessary from time to time;
  - g. To initiate and conduct settlement negotiations with counsel for the various Defendants;
  - h. To determine Plaintiffs' position on all matters arising during this litigation (after such consultation with other counsel as they deem appropriate) and present such position orally and/or in writing to the Court and opposing parties;
  - i. To consult with and employ experts, as necessary;
  - j. To initiate, coordinate and conduct discovery;
  - k. To represent Plaintiffs at trial and on any appeal of this matter;
  - l. To negotiate and execute agreements with local counsel or other cooperating attorneys;
  - m. To determine the appropriate fee allocation among Plaintiffs' counsel as they contributed to resolution or otherwise provided benefit to the class;
- and

n. To perform such other duties as are necessary in connection with the prosecution of this litigation.

3. Interim Class Counsel shall be the contact between Plaintiffs' counsel and Defendant's counsel as well as the spokesperson for Plaintiffs' counsel. All agreements reached with the Interim Class Counsel shall be binding on all other Plaintiffs' counsel in the Consolidated Action.

4. Interim Class Counsel are hereby designated as the counsel for Plaintiffs in the Consolidated Action upon whom all notices, orders, pleadings, motions, discovery, and memoranda relating to the Consolidated Action shall be served, and Defendants shall effect service of papers on Plaintiffs in the Consolidated Action by serving Interim Class Counsel.

5. No motion or request for discovery shall be served or filed by Plaintiffs, or other pretrial proceedings initiated by Plaintiffs, except by or with the authorization of Interim Class Counsel.

6. The organizational structure set forth in this section applies to all Plaintiffs' counsel in the Consolidated Action, including any action subsequently governed by this Order.

7. No communications among Plaintiffs' counsel shall be taken as a waiver of any privilege or protection to which they would otherwise be entitled.

### **III. FILING OF PLEADINGS**

Within **21 days** of appointment by the Court, Interim Class Counsel shall file an amended consolidated pleading. Defendants' shall move or respond to the consolidated complaint within **30 days** thereafter. If defendants shall move to dismiss, Interim Class Counsel shall have **21 days** to respond and Defendants shall have **14 days** thereafter to file a reply. Defendants shall have no obligation to respond to any prior filed pleading in the actions consolidated herein. No other deadlines shall be superseded this Order, unless ordered by the Court.

### **IV. STATUS CONFERENCE**

The Case Management Conference previously set by Court for April 6, 2011 shall remain on calendar as a status conference, and not the Initial Case Management Conference con-

templated by Civil Local Rule 16-2. In advance of the April 6 status conference, the parties will meet and confer concerning a schedule for the Initial Case Management Conference and related matters and will either present a proposed schedule to the Court or present their respective positions for resolution by the Court at the April 6 status conference. **However, the parties must still file a single joint Case Management Statement by March 30, 2011, presenting their proposed schedule (or respective positions) to the Court.**

#### V. MODIFICATION OF THIS ORDER

This Order may be modified, supplemented, or superseded by order of the Court, or, upon the Court's approval, by any party for good cause shown.

Dated: March 3, 2011

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By: s/Avi Kreitenberg

Avi Kreitenberg

One of the Attorneys for Plaintiff Lalo,  
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2 Dated: March 3, 2011

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19 Dated: March 7, 2011

By: s/Jeff S. Westerman

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Dated: March 4, 2011

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21 Dated: March 7, 2011

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6 Dated: March 4, 2011

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8 On Behalf of Defendant Pandora, Inc.,  
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27 SHEPPARD MULLIN RICHTER &  
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2 Dated: March 8, 2011

By: s/Sacha Von Mende Henry

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14 Dated: March 9, 2011

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2 Dated: March 9, 2011

By: s/James Donato

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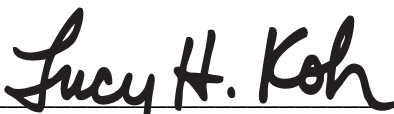
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9 ATTORNEYS FOR DEFENDANT WEBMD HEALTH  
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14  
15 **PURSUANT TO THE STIPULATION AS MODIFIED, IT IS SO ORDERED.**  
16  
17

18  
19 Dated: March 15, 2011



LUCY H. KOH

UNITED STATES DISTRICT COURT JUDGE